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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS EDWIN LYNN,

Defendant and Appellant.

C067246

(Super. Ct. No.
10F05239)

Appointed counsel for defendant Carlos Edwin Lynn has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We find no errors and no concerns regarding presentence credits. We shall affirm the judgment.

BACKGROUND

In July 2010, a California Highway Patrol officer stopped defendant's vehicle on the highway because defendant was speeding and making unsafe lane changes. Defendant spoke slowly, his eyes were glassy and watery, and he had the odor of

alcohol on his breath. The officer administered two preliminary alcohol screening tests to defendant; the first registered 0.157 percent and the second 0.158 percent. Defendant's blood was drawn approximately an hour and 15 minutes after his arrest. His blood-alcohol content was .17 percent.

On December 14, 2010, defendant pled no contest to driving with a suspended license with three prior suspension convictions (count 3). On December 16, 2010, a jury convicted defendant of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a) [count 1]) and driving with a blood-alcohol level of .08 percent or more (Veh. Code, § 23152, subd. (b) [count 2]). The jury also found true an allegation that defendant's blood-alcohol level was .15 percent or greater (Veh. Code, § 23578).

On January 14, 2011, prior to sentencing, the trial court found defendant had a prior strike conviction (robbery). The court then sentenced defendant to state prison for four years on each count, staying sentence on count 1 pursuant to Penal Code section 654, and to 100 days in county jail on count 3, to run concurrently with count 2. The court awarded defendant presentence credit of 259 days, consisting of 173 days of actual credit plus 86 days of conduct credit.¹

Defendant filed a timely notice of appeal.

¹ Defendant is not entitled to increased conduct credit because of his prior strike conviction. (Pen. Code, § 2933, subd. (e) (3).)

DISCUSSION

Counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

RAYE, P. J.

MURRAY, J.